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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

[NPS-KLGO-19374; PPAKKLGOL0, PPMPRLE1Z.L00000]

RIN 1024-AE27

Special Regulations, Areas of the National Park System, Klondike Gold Rush National Historical Park, Horse Management

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service is revising the special regulations for Klondike Gold Rush National Historical Park to close the core Dyea Historic Townsite to the use of horses except by special use permit issued by the superintendent.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Andee Sears, Regional Law Enforcement Specialist, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501. Phone (907) 644-3410. Email: AKR_Regulations@nps.gov.

SUPPLEMENTARY INFORMATION:

Background and Significance of Klondike Gold Rush National Historical Park

Klondike Gold Rush National Historical Park (KLGO or park) was established in 1976. The park includes 13,191 acres and is the only NPS area authorized and established solely to commemorate an American gold rush. The purpose of the park is to preserve for the benefit and inspiration of the people of the United States, the historic structures, trails, artifacts and

landscapes and stories associated with the Klondike Gold Rush of 1898.

Part of the park is the Dyea Historic Townsite, which served as the gateway community to the Chilkoot Trail. At the time of the Gold Rush, approximately 10,000 people lived in Dyea. Dyea is rich in surface artifacts and other remnants from the Klondike Gold Rush of 1898. Horses were a very important and visible component of the 1898 Klondike Gold Rush and the Dyea Historic Townsite from 1897 and for several decades afterward. Thousands of unique and irreplaceable cultural landscape features and artifacts remain within and above the top layers of soil, and as such are highly susceptible to damage from ground disturbance, including disturbance caused by unregulated horseback traffic.

Authority to Promulgate Regulations

The National Park Service (NPS) manages KLGO under a statute commonly known as the NPS Organic Act of 1916 (Organic Act) (54 U.S.C. 100101 et seq.), which gives the NPS broad authority to regulate the use of the park areas under its jurisdiction. The Organic Act authorizes the Secretary of the Interior, acting through NPS, to “prescribe such regulations as the Secretary considers necessary or proper for the use and management of [National Park] System units.” 54 U.S.C. 100751(a).

Management of the park is also governed by the Alaska National Interest Lands Conservation Act (ANILCA). Horses at KLGO are a form of non-motorized surface transportation for traditional activities which is subject to Section 1110(a) of ANILCA. Under this section of ANILCA, such use is subject to reasonable regulations to protect the natural and other values of KLGO. Under the Department’s regulations implementing this statutory provision at 43 CFR 36.11(h), NPS may permanently close an area to this form of transportation by regulation upon a finding by the NPS that the activity would be detrimental to the resource

values of the area. Based upon the analysis in the Dyea Area Plan and Environmental Assessment (EA) and the associated Finding of No Significant Impact (FONSI), NPS finds that unregulated horse traffic in the Dyea Historic Townsite would be detrimental to the resource values of the area, namely the thousands of unique and irreplaceable cultural landscape features and artifacts that remain within and above the top layers of soil in the area.

Dyea Area Plan and Environmental Assessment and Final Rule

In January 2014, the NPS completed the EA after providing an opportunity for public comment. The proposed action in the EA calls for eliminating horse traffic from the Dyea Historic Townsite except for limited and infrequent use on an established route by private, non-commercial parties pursuant to a special use permit issued by the superintendent. In March 2014, the NPS held a public hearing in Skagway, AK for the proposed restrictions on horse use in the Dyea Historic Townsite in compliance with regulations at 43 CFR 36.11(h)(3). In September 2014, the Regional Director for the Alaska Region signed the FONSI identifying the proposed action in the EA as the selected action. The rule implements the selected action by closing the Dyea Historic Townsite to the use of horses except under a special use permit issued by the superintendent under 36 CFR 1.6 (Permits), the provisions of which apply to the permits issued by the superintendent. If, after observation, the superintendent determines that the desired condition, as defined in the EA, has deteriorated, the superintendent may include permit conditions to protect natural and cultural resources and, if necessary, cease issuing permits until impacts from prior uses of horses are mitigated. The superintendent may also adopt permit conditions to limit impacts from the use of horses on other user experiences.

The closure area is a small 80 acre parcel encompassing the core Dyea Historic Townsite. Alternate routes have already been designated for commercial horse use outside the core Dyea

Historic Townsite and noncommercial horse use will continue to be unrestricted outside the Historic Townsite.

Summary of Public Comments

The NPS published the proposed rule at 80 FR 39988 (July 13, 2015). The NPS accepted comments through the mail, hand delivery, and through the Federal eRulemaking Portal at <http://www.regulations.gov>. The comment period was open through September 11, 2015. The NPS did not receive any comments on the proposed rule. The NPS did not make any substantive changes to the proposed rule, although the final rule clarifies that the superintendent will issue permits under 36 CFR 1.6.

Compliance with Other Laws, Executive Orders, and Department Policy.

Regulatory Planning and Review (Executive Order 12866).

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act.

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on the cost-benefit and regulatory flexibility analyses found in the reports entitled “Regulatory Flexibility Threshold Analysis: Special Regulations for Klondike Gold Rush National Historical Park” and “Preliminary Cost/Benefit Analysis: Special Regulations for Klondike Gold Rush National Historical Park in Alaska which can be viewed online at <http://www.nps.gov/klgo/learn/management/documents.htm>.

Small Business Regulatory Enforcement Fairness Act.

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act.

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is therefore not required.

Takings (Executive Order 12630).

This rule does not effect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132).

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. The rule is limited in effect to federal lands managed by the NPS in Alaska and will not have a substantial direct effect on state and local government in Alaska. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988).

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

1. Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
2. Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation with Indian tribes (E.O. 13175 and Department policy) and ANCSA**Corporations.**

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the criteria in Executive Order 13175 and under the Department's tribal consultation policy and Alaska Native Claims Settlement Act (ANCSA) Corporations policy and have determined

that tribal consultation is not required because the rulemaking will have no substantial direct effect on federally recognized Indian tribes or ANCSA Native Corporation lands, water areas, or resources. Nevertheless, the NPS sent copies of the draft plan and letters requesting government-to-government consultation to four nearby Native tribal governments, one of which is the Carcross/Tagish First Nations tribe in Carcross, Canada. Several meetings were held between 2012 and 2013 with tribal governments in Skagway and Haines to discuss key components of the Dyea Area Plan and EA that were of interest to the local federally recognized tribes.

Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. OMB has approved the information collection requirements associated with NPS Special Park Use Permits and has assigned OMB Control Number 1024-0026 (expires 08/31/16). An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act.

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required because we reached a Finding of No Significant Impact. The EA and FONSI are available online at <http://www.nps.gov/klgo/learn/management/documents.htm>.

Effects on the Energy Supply (Executive Order 13211).

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Drafting Information.

The primary authors of this regulation are Jay Calhoun, Regulations Program Specialist, National Park Service, Jenna Giddens of Kenai Fjords National Park, Andee Sears of the Alaska Regional Office, National Park Service, and Tim Steidel of Klondike Gold Rush National Historical Park.

List of Subjects in 36 CFR Part 13

Alaska, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service amends 36 CFR part 13 as set forth below:

PART 13 – NATIONAL PARK SYSTEM UNITS IN ALASKA

1. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 3124; 54 U.S.C. 100101, 100751, 320102; Sec. 13.1204 also issued under Sec. 1035, Pub. L. 104-333, 110 Stat. 4240.

2. Add § 13.1408 to subpart Q to read as follows:

§ 13.1408 Dyea.

The Dyea Historic Townsite is closed to the use of horses by members of the public except by special use permit issued by the Superintendent under § 1.6 of this chapter. A map showing the boundaries of the Dyea Historic Townsite is available on the park website and at the park visitor center.

Dated: October 21, 2015

Michael Bean
Principal Deputy Assistant Secretary for Fish and Wildlife and Parks

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